

## MARCELLA KNITTEL

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1                   - - - -

- 2 A. I don't recognize this actual document.  
 3 Q. You recall that there was a credit agreement  
 4 between certain AHERF-related entities and PNC  
 5 Bank?  
 6 A. Yes.  
 7 Q. And do you recall that that was a line of  
 8 credit to --  
 9 A. Yes.  
 10 Q. -- the AHERF-related entities? Just turning  
 11 for a second to the page with the Bates No. PNC  
 12 38159 in the bottom right corner, it's close to  
 13 the back of the document. When you get there I  
 14 was -- I'm going to ask you do you see that  
 15 there's a signature page there?  
 16 A. Yes.  
 17 Q. Do you see that signing for PNC Bank there's  
 18 someone named Emery D. Holloway?  
 19 A. Yes.  
 20 Q. And was he a prior relationship manager for  
 21 AHERF or one its predecessors?  
 22 A. Yes.  
 23 Q. Let me just for simplicity's sake, when I  
 24 mention AHERF, is it okay for purposes of the  
 25 deposition today I mean AHERF or any of its

- 1 of -- one of those reviewing the credit  
 2 document, the credit agreements to make sure  
 3 that everything that we needed as far as  
 4 covenants and assurances and so forth was  
 5 included in the credit agreement, alongside  
 6 appropriate legal counsel.  
 7 Q. Who would actually negotiate credit agreements  
 8 to the extent you were involved in preparing  
 9 them?  
 10 A. Myself, plus our legal counsel.  
 11 Q. And you said yourself and legal counsel would  
 12 be involved in the drafting process whereby the  
 13 credit agreements were ultimately prepared?  
 14 A. That's right.  
 15 Q. Turning for a second to the page with Bates No.  
 16 ending 38147, do you see on this page there's a  
 17 line that says, Financial and Other Reporting  
 18 Information, Quarterly Financials?  
 19 A. Yes.  
 20 Q. Do you recall that from time to time pursuant  
 21 to this credit agreement while you were  
 22 relationship manager, the United Hospitals, St.  
 23 Christopher's Hospital For Children, and  
 24 Horizon Medical Corporation provided to PNC  
 25 quarterly financial statements?

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- 1 predecessors? I understand it went by  
 2 different names earlier in time.  
 3 A. Yes.  
 4 Q. Did you have any responsibility when you were  
 5 relationship manager for AHERF to monitor  
 6 AHERF's compliance or its affiliates'  
 7 compliance with this credit agreement? Maybe  
 8 not this actual document, but your  
 9 understanding of the fact that there was a  
 10 credit agreement?  
 11 A. Yes.  
 12 Q. And what kind of responsibilities did you have  
 13 with respect to the credit that was extended by  
 14 PNC to AHERF's affiliates?  
 15 A. For any -- for any credit agreement that PNC  
 16 had with any of the AHERF affiliates, it would  
 17 have been part of my responsibility to make  
 18 sure that they were in compliance with the  
 19 aspect -- any aspect of the credit agreement.  
 20 Q. Do you know who typically prepared any -- or  
 21 were you involved in the preparation of any  
 22 credit agreements between PNC Bank and any  
 23 AHERF affiliates?  
 24 A. When we approved credit while I was  
 25 relationship manager, I would have been one

- 1 A. Yes.  
 2 Q. And was one of your responsibilities to make  
 3 sure that these entities were actually  
 4 providing their financial statements, quarterly  
 5 financial statements on a timely basis?  
 6 A. Yes.  
 7 Q. And do you recall also that annual financial  
 8 statements were provided by those entities as  
 9 well?  
 10 A. Yes.  
 11 Q. And, again, your responsibility would be to  
 12 make sure they were coming in?  
 13 A. Yes.  
 14 Q. Do you recall whether AHERF itself, the parent  
 15 company, presented financial statements on a  
 16 quarterly basis to you under this credit  
 17 agreement?  
 18 A. I don't recall.  
 19 Q. Do you recall whether AHERF's credit in any way  
 20 backed this particular credit agreement?  
 21 A. I don't remember.  
 22 Q. If you turn to page ending with 38130, PNC  
 23 38130, which is near the front, do you see that  
 24 under the definition of guarantor --  
 25 A. Yes.

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1 Q. And I take it that the senior loan committee,  
 2 by the fact that the bonds were issued,  
 3 ultimately felt that risk was one that it was  
 4 willing to take?  
 5 A. By the fact it was approved as a credit, yes.  
 6 MR. TERUYA: Why don't we go off the  
 7 record to change the tape and also break for  
 8 the day.  
 9 THE VIDEOGRAPHER: We are now going  
 10 off the record. The time is 5:02 p.m.  
 11 - - - -  
 12 (The proceedings were adjourned at 5:02 p.m.)  
 13 - - - -  
 14  
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1 COMMONWEALTH OF PENNSYLVANIA ) E R R A T A  
 2 COUNTY OF ALLEGHENY ) S H E E T

3 I, Marcella Knittel, have read the foregoing  
 4 pages of my deposition given on Wednesday, July 23,  
 5 2003, and wish to make the following, if any,  
 6 amendments, additions, deletions or corrections:  
 7  
 8  
 9  
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 11  
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 19

20 In all other respects, the transcript is true and  
 21 correct.

22 MARCELLA KNITTEL

23 Subscribed and sworn to before me this  
 24 day of \_\_\_\_\_, 2003.

25 Notary Public

AKF Reference No. HW76496

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1 COMMONWEALTH OF PENNSYLVANIA ) CERTIFICATE  
 2 COUNTY OF ALLEGHENY ) SS:  
 3 I, Heidi H. Willis, RPR, CRR, a Court Reporter  
 4 and Notary Public in and for the Commonwealth of  
 5 Pennsylvania, do hereby certify that the witness,  
 6 MARCELLA KNITTEL, was by me first duly sworn to  
 7 testify to the truth, the whole truth, and nothing  
 8 but the truth; that the foregoing deposition was  
 9 taken at the time and place stated herein; and that  
 10 the said deposition was recorded stenographically by  
 11 me and then reduced to printing under my direction,  
 12 and constitutes a true record of the testimony given  
 13 by said witness.  
 14 I further certify that I am not a relative or  
 15 employee of any of the parties, or a relative or  
 16 employee of either counsel, and that I am in no way  
 17 interested directly or indirectly in this action.  
 18 IN WITNESS WHEREOF, I have hereunto set my hand  
 19 and affixed my seal of office this 28th day of July,  
 20 2003.  
 21  
 22  
 23  
 24  
 25

Notary Public

**In The Matter Of:**

***AHERF v.  
PRICEWATERHOUSECOOPERS, L.L.P.***

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***MARCELLA KNITTEL  
July 24, 2003***

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**KNITTEL, MARCELLA**



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1 Q. To save time let me just ask, you recall as you  
 2 mentioned in the abstract but with reference to  
 3 this particular form of document, you recall  
 4 receiving documents like this in the ordinary  
 5 course?  
 6 A. Yes.  
 7 Q. And this in particular, just to go through this  
 8 example, this received stamp November 8, 1996,  
 9 does that indicate the date that some group at  
 10 PNC received this document?  
 11 A. Yes.  
 12 Q. And you received this type -- and would that be  
 13 true generally speaking of this form of  
 14 document?  
 15 A. Yes.  
 16 Q. And with respect to this form of document, did  
 17 you receive these documents, this form of  
 18 document within a reasonable amount of time  
 19 after it was supposed to be delivered to you?  
 20 MR. COGAN: Objection.  
 21 A. I don't -- I don't know what the -- this looks  
 22 like Joe Dionisio signed it on October 16th. I  
 23 don't know what the requirement was, the number  
 24 of days, if it was 120 or --  
 25 Q. Okay. I'm sorry.

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1 A. So it looks like it was within a reasonable  
 2 period of time. I don't know if it complied  
 3 with the number of days that were required in  
 4 the indenture.  
 5 Q. Let me restate it a different way. Do you  
 6 recall that in the ordinary course AHERF or one  
 7 of its affiliates sent certificates like this  
 8 one to you pursuant to its obligations under  
 9 various credit agreements --  
 10 A. Yes.  
 11 Q. -- with PNC?  
 12 A. Yes.  
 13 Q. And do you recall that those officer's  
 14 certificates were delivered to you in a timely  
 15 fashion?  
 16 A. To the best of my recollection, yes.  
 17 Q. And that was as a practice?  
 18 A. Yes.  
 19 MR. TERUYA: You can set that  
 20 document aside. Let me mark as Exhibit 1753 a  
 21 officer's certificate for Allegheny General  
 22 Hospital Obligated Group for June 30, 1996,  
 23 with Bates Nos. PNC 24549 through 52.  
 24 ----  
 25 (Exhibit 1753 marked for identification.)

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1 ----  
 2 BY MR. TERUYA:  
 3 Q. Do you recognize this document?  
 4 A. Yes, this is another officer's certificate for  
 5 the AGH Obligated Group submitted by Joe  
 6 Dionisio to the bank, and it included covenant  
 7 calculations as required under the  
 8 reimbursement security agreement for the  
 9 letters of credit.  
 10 Q. And is this a type of officer's certificate  
 11 that was sent from Allegheny General Hospital  
 12 Obligated Group to PNC in the ordinary course?  
 13 A. Yes.  
 14 Q. And that was pursuant to the letters of credit  
 15 that PNC entered into with Allegheny General  
 16 Hospital Obligated Group?  
 17 A. Yes.  
 18 Q. Just to be clear, the last exhibit we looked at  
 19 was the type of officer's certificate that was  
 20 sent pursuant to the master trust indenture in  
 21 the ordinary course?  
 22 A. Yes.  
 23 Q. And do you recall that you received the type of  
 24 officer's certificate that Exhibit 1753 is in a  
 25 timely fashion?

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1 A. To the best --  
 2 MR. COGAN: Objection.  
 3 A. -- of my recollection, yes.  
 4 Q. And, again, with respect to this kind of  
 5 officer's certificate, the stamp received  
 6 November 8, 1996, reflects the date that some  
 7 group at PNC received this document?  
 8 A. Yes.  
 9 MR. TERUYA: You can set that aside,  
 10 please. Could we go off the record for one  
 11 moment.  
 12 THE VIDEOGRAPHER: We are going off  
 13 the video record. The time indicated on the  
 14 screen is 1:04 p.m.  
 15 ----  
 16 (There was a discussion off the record.)  
 17 ----  
 18 THE VIDEOGRAPHER: We are back on the  
 19 video record. The time as indicated on the  
 20 screen is 3:10 p.m.  
 21 MR. TERUYA: I have no further  
 22 questions on direct. I'll cover a couple of  
 23 documents that I'm waiting for on redirect.  
 24  
 25

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## EXAMINATION

BY MR. COGAN:

Q. Good afternoon, Ms. Knittel. As you know, I introduced myself on the record. My name is Kevin Cogan, and I am appearing here today on behalf of the Unsecured Creditors Committee.

I have some questions I'd like to ask you, and hopefully we can keep this pretty brief.

Towards the end of your direct examination here, you were asked a series of questions. One of those questions was do you have any personal knowledge of GAAP violations in the AHERF financial statements and the DVOG financial statements. Do you recall that question?

A. Yes.

Q. And as I understood your answer, you have no personal knowledge of those financial statements containing any GAAP violations; is that right?

A. That's right.

Q. Now, if, in fact, there were GAAP violations in

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or material misstatements?

MR. TERUYA: Objection.

A. Because -- because as lenders we place a great deal of reliance on the audited financial statements, and that's the reason we ask to have audited financial statements on an annual basis.

Q. Now, if the audited financial statements that you were provided contained material misstatements or GAAP violations and as a result you didn't discover that there were, in fact, debt covenant violations, would that be of significance to you?

A. Yes.

MR. TERUYA: Objection.

Q. And if, in fact, there had been violations of the various debt covenants that were contained in the different credit agreements that you had with AHERF and its affiliates, would you have wanted to know about those violations?

A. Absolutely.

MR. TERUYA: Objection.

Q. And could you just tell us if, in fact, back in 1996 or 1996 you had learned of debt covenant violations, would you or PNC have simply

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the financial statements of AHERF and DVOG, is that information that you would have liked to have had as the relationship manager for the AHERF account?

A. Absolutely.

Q. And similarly, you were asked whether you had any personal knowledge of any material misstatements contained in those financial statements. Do you recall that?

A. Yes.

Q. And, again, as you sit here today, I think your testimony was you have no personal knowledge of material misstatements in the financial statements; is that right?

A. That's right.

Q. However, can I assume that if there were material misstatements in the audited financial statements that were provided to you and thereby to PNC, you would have liked to have known that fact?

A. Yes, absolutely.

Q. And why would you and, of course, PNC have wanted to know whether the audited financial statements that AHERF and its obligated group were providing to you contained GAAP violations

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ignored those debt covenant violations?

MR. TERUYA: Objection.

A. Absolutely not.

Q. I assume it was never the practice of either you as the relationship manager or in your experience at PNC to simply ignore debt covenant violations; is that right?

MR. TERUYA: Objection.

A. That's correct.

Q. Typically in the face of a debt covenant violation, does that trigger some sort of response from PNC?

A. Yes.

MR. TERUYA: Objection.

Q. And could you tell us typically, or not typically, could you tell us what are some of the things that a relationship manager might do in the face of discovering debt covenant violations?

MR. TERUYA: Objection.

A. Well, the first thing we would -- as a relationship manager I would have done was taken it to my manager and to the appropriate people who needed to know within PNC, and then we would have done whatever was necessary to --



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1 we would have discussed that violation with the  
2 management of the company, whether it be AHERF  
3 or any other company, and determine how we were  
4 going to move forward at that point; and like  
5 I've inside the past, that would be -- the  
6 actions would have been taken -- the actions  
7 that would have been taken would have been  
8 determined by the circumstances at the time,  
9 but certainly the knowledge of the violation  
10 and the documentation of the violation gives us  
11 the right to take certain actions.

12 Q. And am I correct that when a debt violation  
13 occurs, that may trigger some remedies  
14 depending on the terms and conditions as they  
15 are set forth in the credit agreements?

16 MR. TERUYA: Objection.

17 A. Absolutely.

18 Q. Now, one of the documents that you were shown  
19 towards the end here was a officer's  
20 certificate dated June 30th, 1996, and it was  
21 marked as Exhibit 1753. Do you have that in  
22 front of you?

23 A. Yes.

24 Q. And as I would understand it, Exhibit 1753 is  
25 the officer's certificate that was provided by

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1 foundation.

2 A. I don't ever remember a conversation about  
3 that.

4 Q. Two other exhibits I'd like to talk to you  
5 about. Exhibit 1739 and 1708, do you have  
6 those in front of you?

7 A. Yes.

8 Q. Now, Exhibit 1708 as I understand --

9 MR. TERUYA: Can you hold on for one  
10 second. Let me get those out.

11 MR. COGAN: Yes.

12 MR. TERUYA: Okay.

13 Q. Just going back, can you think of any occasion  
14 as you are sitting here that you learned of a  
15 debt covenant violation for any credit for  
16 which you had a relationship management that  
17 you simply ignored the violation?

18 A. Never.

19 Q. Directing your attention now to Exhibit 1708,  
20 do you have that in front of you?

21 A. Yes.

22 Q. I understand that this is one of the quarterly  
23 credit memo forms that you completed for the  
24 Allegheny General Hospital; is that right?

25 A. Yes.

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1 Allegheny General Hospital pursuant to the  
2 letter of credit dated February 1, 1988, and  
3 January 29, 1993; is that your understanding?

4 A. Yes.

5 Q. Now, one of the covenants that AGH was required  
6 to maintain was a consolidated unrestricted  
7 fund balance of at least \$200 million; is that  
8 right?

9 A. That's correct.

10 Q. Now, would you have wanted to know that -- or  
11 would you have wanted to know if in calculating  
12 that unrestricted fund balance Allegheny  
13 General Hospital in 1996 and in 1997 was using  
14 or including in the calculations loans to  
15 affiliates?

16 MR. TERUYA: Objection.

17 A. Yes.

18 Q. Did anybody ever bring to your attention that  
19 in calculating the unrestricted fund balance  
20 pursuant to the covenants contained in those  
21 letters of credit of February 1988 and January  
22 1993 that Allegheny General Hospital was, in  
23 fact, including loans to affiliates in  
24 calculating the unrestricted fund balance?

25 MR. TERUYA: Objection, form and

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1 Q. And the date of this form that has been marked  
2 as Exhibit 1708 is December 31st, 1995; is that  
3 right?

4 A. That's right.

5 Q. Now, in section (a) of that form, and as  
6 Mr. Teruya pointed out, nine of those 10  
7 categories were down, performance categories;  
8 is that right?

9 A. That's right.

10 Q. And yet when we go to section (b), you were  
11 asked whether there had been any payment  
12 delays, covenant violations -- well, let me  
13 back up.

14 Going back to section (a) where we  
15 have a performance that is down from the last  
16 quarterly review in nine of those 10  
17 categories, you were asked are you concerned  
18 about these developments, are you not?

19 A. Right, yes.

20 Q. And your answer there was no?

21 A. That's right.

22 Q. Now, would I be correct that one of the reasons  
23 that you were not concerned about those down  
24 performances is because at least as of that  
25 date there had been no delays on any payments

## MARCELLA KNITTEL

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1 COMMONWEALTH OF PENNSYLVANIA ) CERTIFICATE

2 COUNTY OF ALLEGHENY ) SS:

3 I, Heidi H. Willis, RPR, CRR, a Court Reporter  
4 and Notary Public in and for the Commonwealth of  
5 Pennsylvania, do hereby certify that the witness,  
6 MARCELLA KNITTEL, was by me first duly sworn to  
7 testify to the truth, the whole truth, and nothing  
8 but the truth; that the foregoing deposition was  
9 taken at the time and place stated herein; and that  
10 the said deposition was recorded stenographically by  
11 me and then reduced to printing under my direction,  
12 and constitutes a true record of the testimony given  
13 by said witness.

14 I further certify that I am not a relative or  
15 employee of any of the parties, or a relative or  
16 employee of either counsel, and that I am in no way  
17 interested directly or indirectly in this action.

18 IN WITNESS WHEREOF, I have hereunto set my hand  
19 and affixed my seal of office this 28th day of July,  
20 2003.

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\_\_\_\_\_  
Notary Public

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1 COMMONWEALTH OF PENNSYLVANIA ) E R R A T A  
2 COUNTY OF ALLEGHENY ) S H E E T

2

I, Marcella Knittel, have read the foregoing  
3 pages of my deposition given on Thursday, July 24,  
4 2003, and wish to make the following, if any,  
5 amendments, additions, deletions or corrections:

Page/Line Should Read Reason for Change

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In all other respects, the transcript is true and  
correct.

\_\_\_\_\_  
MARCELLA KNITTEL

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public

AKF Reference No. HW76522

**Korbly Dep.**



Ben Korbly

Page 1

1 UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 Case No. 00-684

4 THE OFFICIAL COMMITTEE OF :  
UNSECURED CREDITORS OF Deposition of:  
5 ALLEGHENY HEALTH, EDUCATION :  
and RESEARCH FOUNDATION, BEN B. KORBLY

6 :  
Plaintiff,

7 :  
vs.

8 :  
PRICewaterhouseCOOPERS, LLP,

9 :  
Defendants.

10 -----:

11  
12 TRANSCRIPT of testimony as taken by and  
13 before PATRICIA A. SANDS, a Shorthand Reporter  
14 and Notary Public of the States of New York and New  
15 Jersey, at the offices of CRAVATH, SWAINE & MOORE,  
16 LLP, 825 Eighth Avenue, New York, New York on  
17 Tuesday, December 16, 2003, commencing at 9:09 in  
18 the forenoon.  
19  
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23  
24  
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Ben Korbly

<p style="text-align: right;">Page 222</p> <p>1 Q. Did you have a role in preparing 2 either the cover memo or the attached document 3 headed "Issues for consideration - retention of 4 PricewaterhouseCoopers"?</p> <p>5 A. Yes.</p> <p>6 Q. And what was your role?</p> <p>7 A. I was one of the drafters.</p> <p>8 Q. And what was your purpose in 9 preparing the document?</p> <p>10 A. To present the issues for consideration of 11 the audit committee of AHERF, and why we thought it 12 made sense to continue the relationship with us.</p> <p>13 Q. And it was addressed from 14 Mr. Stalder to Mr. Dionisio, at least by way of 15 cover letter, dated August 26th, 1998?</p> <p>16 A. Yes.</p> <p>17 Q. And towards the end of the document 18 on the final page, under the heading "Why 19 PricewaterhouseCoopers is uniquely positioned to 20 assist," under the phrase "timing" or the bullet 21 point "timing" you are -- I presume Mr. Stalder was 22 the other participant in preparing the document?</p> <p>23 A. He was another participant in preparing the 24 document.</p> <p>25 Q. Were there others?</p>	<p style="text-align: right;">Page 224</p> <p>1 A. I believe there were.</p> <p>2 Q. And who were they?</p> <p>3 A. I think Frank Barron may have looked at 4 some things.</p> <p>5 Q. Do you recall what Mr. Barron looked 6 at?</p> <p>7 A. No.</p> <p>8 Q. Do you recall when he was first 9 involved in your work on AHERF?</p> <p>10 A. No.</p> <p>11 Q. But it was sometime in the late 12 summer to fall of 1998?</p> <p>13 A. It was before I visited with that group of 14 regulators, as well as before I visited with the 15 grand jury.</p> <p>16 Q. At least that early?</p> <p>17 A. I would understand that somewhere I came to 18 have an understanding that my firm may have been 19 contacted by the SEC or somebody on the topic of 20 AHERF. So, you know, that's an event that normally 21 gives you rise to talk to outside counsel.</p> <p>22 Q. Do you recall Mr. Barron or any 23 outside counsel being involved in communicating 24 with you about AHERF matters before your knowledge 25 of the SEC contact?</p>
<p style="text-align: right;">Page 223</p> <p>1 A. I believe there probably were.</p> <p>2 Q. Do you know who they were?</p> <p>3 A. Probably Mel. I would guess Erica Baird 4 looked at a draft of it.</p> <p>5 Q. At this time were you showing 6 Ms. Baird, or other counsel, communications with 7 AHERF in advance of their dispatch?</p> <p>8 A. At this time I think this is real 9 communication that I had with AHERF, so the answer 10 to that would be, yes.</p> <p>11 Q. And did you subsequently or after 12 this communication run communications by Ms. Baird 13 or other counsel first?</p> <p>14 A. Not all of them.</p> <p>15 Q. But significant communications you 16 did?</p> <p>17 A. You would use the word -- communications 18 regarding a significant and potentially 19 controversial topic. How's that?</p> <p>20 Q. Is that your phrase?</p> <p>21 A. That will be my phrase.</p> <p>22 Q. All right. And were there other 23 lawyers besides Ms. Baird that you ran 24 communications or other documents by during your 25 work on AHERF?</p>	<p style="text-align: right;">Page 225</p> <p>1 A. No.</p> <p>2 Q. Were there any other in-house or 3 PricewaterhouseCoopers-employed, with a hyphen 4 between those two words, lawyers that you 5 communicated with on AHERF matters, other than 6 Ms. Baird?</p> <p>7 A. Yes.</p> <p>8 Q. And who were they?</p> <p>9 A. It was probably -- I should say I believe I 10 could well have. Julie Crocket, who is a lawyer 11 who reports to Erica Baird and who is someone I 12 work with quite commonly. So --</p> <p>13 Q. Go ahead.</p> <p>14 A. More on the, you know, what makes the most 15 developing editorial sense of, you know, how do I 16 construct, how do I write, what do I say. Because 17 Erica might not have been available to answer the 18 phone or whatever.</p> <p>19 Q. As a matter of your practice, you 20 commonly work with this other lawyer as well?</p> <p>21 A. Yes.</p> <p>22 Q. And did so at the time?</p> <p>23 A. Yes.</p> <p>24 Q. And where are the two lawyers 25 situated by way of office, if you know?</p>

57 (Pages 222 to 225)

Ben Korbly

<p style="text-align: right;">Page 226</p> <p>1 A. 1301 Sixth Avenue, New York.</p> <p>2 Q. And were they so situated in the</p> <p>3 fall and summer of 1998?</p> <p>4 A. Actually, that's where they were the fall</p> <p>5 of 1998. They have now moved down to 1177 Avenue</p> <p>6 of the Americas.</p> <p>7 Q. Here in New York?</p> <p>8 A. Yes.</p> <p>9 Q. And do you believe that this</p> <p>10 memorandum entitled "Issues for Consideration -</p> <p>11 Retention of PricewaterhouseCoopers" fairly</p> <p>12 presented the reasons for continuing to retain</p> <p>13 PricewaterhouseCoopers for the work underway?</p> <p>14 A. You used the term "fairly presented,"</p> <p>15 that's like just an English term, not a term of art</p> <p>16 of an auditor?</p> <p>17 Q. I did not mean it as a term of art.</p> <p>18 A. Because I cannot respond as a term of art,</p> <p>19 as a term of English, yes.</p> <p>20 Q. Thank you.</p> <p>21 I'm going to hand you now what has</p> <p>22 previously been marked in this case as Exhibit</p> <p>23 2105, and ask you if you have ever seen it before?</p> <p>24 It is, for the record, or at least</p> <p>25 purports to be for the record, a set of Allegheny</p>	<p style="text-align: right;">Page 228</p> <p>1 Is that fair?</p> <p>2 A. Under Roman numeral IV, item A?</p> <p>3 Q. Yes.</p> <p>4 A. Yes, there is reference.</p> <p>5 Q. Is the handwriting that appears on</p> <p>6 either side of the paragraph below Roman numeral</p> <p>7 IV A yours?</p> <p>8 A. No.</p> <p>9 Q. Is the handwriting on the rest of</p> <p>10 the document, and it appears only limitedly, yours?</p> <p>11 A. The handwriting that appears only limitedly</p> <p>12 is not mine.</p> <p>13 Q. In your prior review of the minutes</p> <p>14 have you had any opportunity to notice anything</p> <p>15 inaccurate in them?</p> <p>16 MR. RYAN: Objection.</p> <p>17 A. Yes.</p> <p>18 Q. What is it that you have noticed?</p> <p>19 A. My name is misspelled.</p> <p>20 Q. Anything else?</p> <p>21 MR. RYAN: Objection.</p> <p>22 A. I believe that if these are draft minutes</p> <p>23 as it is marked at the top, I don't know who marked</p> <p>24 "draft," then we would have reviewed them and</p> <p>25 provided commentary on their accuracy. And without</p>
<p style="text-align: right;">Page 227</p> <p>1 Health Education and Research Foundation finance</p> <p>2 and audit committee minutes for the meeting held on</p> <p>3 Thursday, August 27, 1998.</p> <p>4 A. I have seen the document, yes.</p> <p>5 Q. Do you recall when you saw it?</p> <p>6 A. Most recently, yesterday.</p> <p>7 Q. Did you see it before yesterday?</p> <p>8 A. I don't have a positive recollection.</p> <p>9 Q. It notes your presence at the</p> <p>10 meeting under the heading "Other Invitees" along</p> <p>11 with your colleague, Mr. Stalder.</p> <p>12 Am I right?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall attending a meeting in</p> <p>15 late August?</p> <p>16 A. Yes.</p> <p>17 Q. And it was indeed the first meeting</p> <p>18 of the AHERF finance and audit committee, or any</p> <p>19 AHERF board committee that you did attend?</p> <p>20 A. Yes.</p> <p>21 Q. And under heading IV on page 2, you</p> <p>22 and Mr. Stalder appear by name after the name of</p> <p>23 Joseph Dionisio, and under the subheading</p> <p>24 "Potential Restatement of Prior Year Financial</p> <p>25 Statements and Communication Plan."</p>	<p style="text-align: right;">Page 229</p> <p>1 an opportunity to sit for several hours and read</p> <p>2 and contemplate, I don't know what other redactions</p> <p>3 we might suggest.</p> <p>4 Q. And you, in fact, recall either from</p> <p>5 your work yesterday or just generally, that you did</p> <p>6 have an opportunity or took an opportunity rather</p> <p>7 to offer some comments on at least certain sets of</p> <p>8 minutes of AHERF committee meetings?</p> <p>9 A. Yes, we did.</p> <p>10 Q. And was the "we" in that sentence,</p> <p>11 in fact, you?</p> <p>12 A. Among others, it was me.</p> <p>13 Q. Was it a sort of a joint or</p> <p>14 cumulative effort?</p> <p>15 A. Yes.</p> <p>16 Q. But it was communicated only one</p> <p>17 time?</p> <p>18 A. Yes.</p> <p>19 Q. And by you?</p> <p>20 A. It may have been under my signature.</p> <p>21 Q. As we don't have time for the hours</p> <p>22 of reflection, I will show you the communication of</p> <p>23 suggested edits. And it is a document which falls</p> <p>24 under the prior Exhibit number 1985.</p> <p>25 A. (Reviewing document.)</p>

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Ben Korbly

<p style="text-align: right;">Page 230</p> <p>1 Q. Is this the set of minute, suggested</p> <p>2 minute edits that you were just discussing with me?</p> <p>3 A. Yes.</p> <p>4 Q. And you did your best, with the</p> <p>5 input of others, to give all of the edits to the</p> <p>6 minutes that are attached to your letter of</p> <p>7 November 20th, 1998 that you thought were</p> <p>8 appropriate?</p> <p>9 Is that fair?</p> <p>10 A. That's fair.</p> <p>11 Q. And the cover letter, which is</p> <p>12 actually pages 2 and 3 of the exhibit, bears your</p> <p>13 signature?</p> <p>14 A. No.</p> <p>15 Q. It is signed for you by someone</p> <p>16 else?</p> <p>17 A. Yes.</p> <p>18 Q. And do you know who that someone</p> <p>19 was?</p> <p>20 A. No.</p> <p>21 Q. Did you ever have occasion to,</p> <p>22 including today, to disagree with its content?</p> <p>23 A. The letter's content?</p> <p>24 Q. Yes. Or the edits, for that matter.</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 232</p> <p>1 pass it along -- and that he passes it along to the</p> <p>2 lawyers for their consideration, which led me to</p> <p>3 think that he was not expecting the communication</p> <p>4 from you.</p> <p>5 Do you recall now whether you were</p> <p>6 asked to provide edits, or whether you provided</p> <p>7 them, as you say, in a proactive way?</p> <p>8 MR. RYAN: Objection.</p> <p>9 A. I would tell you I would understand he was</p> <p>10 expecting them, and I don't see how you can read</p> <p>11 his letter uniquely to say what you've interpreted</p> <p>12 it to say.</p> <p>13 Q. Well, I don't know that I have</p> <p>14 interpreted it to say anything other than what it</p> <p>15 says, which was my paraphrase of it.</p> <p>16 A. It doesn't say I'm surprised to receive it.</p> <p>17 I believe it says I don't quite know what to make</p> <p>18 of it.</p> <p>19 Q. Right. Here's my question:</p> <p>20 Do you recall being asked to submit</p> <p>21 edits on any committee meeting, edits on the</p> <p>22 minutes of any committee meeting?</p> <p>23 A. Yes.</p> <p>24 Q. And from whom did you receive that</p> <p>25 request?</p>
<p style="text-align: right;">Page 231</p> <p>1 Q. Did you authorize someone to sign it</p> <p>2 on your behalf and dispatch it?</p> <p>3 A. Yes.</p> <p>4 Q. You just can't recall who it was; is</p> <p>5 that right?</p> <p>6 A. That's correct.</p> <p>7 Q. Why did you take the opportunity to</p> <p>8 send the suggested edits to the August 27, 1998,</p> <p>9 September 1, 1998 finance and audit committee</p> <p>10 minutes along with a set of edits on a March 11th,</p> <p>11 1998 meeting?</p> <p>12 A. The latter two, August 27 to September 1,</p> <p>13 1998 were the dates for meetings which I attended.</p> <p>14 Q. Yes.</p> <p>15 A. And someone had asked for our comments.</p> <p>16 Q. Do you know who had asked?</p> <p>17 A. I thought it was the chair.</p> <p>18 Q. Well, the reason I --</p> <p>19 A. Or we pro offered that we had comments, at</p> <p>20 any rate, and they said they would appreciate our</p> <p>21 input.</p> <p>22 Q. And the reason I ask is the cover</p> <p>23 letter to Mr. Barnes from a set of lawyers</p> <p>24 indicates that he doesn't quite know what to make</p> <p>25 of it, that is your letter and proposed edits, and</p>	<p style="text-align: right;">Page 233</p> <p>1 A. As it states in my letter to David Barnes,</p> <p>2 "You indicated you would appreciate our input."</p> <p>3 Q. And so you recall a conversation</p> <p>4 with Mr. Barnes today, or is it just you're relying</p> <p>5 on the written document?</p> <p>6 A. I don't know that it was a conversation as</p> <p>7 much as it was a meeting with the audit committee.</p> <p>8 Q. Do you recall the meeting or what,</p> <p>9 the conversation in the meeting?</p> <p>10 A. No.</p> <p>11 Q. Had you ever in your audit practice</p> <p>12 before provided comments on minutes that you</p> <p>13 attended?</p> <p>14 A. Yes.</p> <p>15 Q. To audit committees?</p> <p>16 A. Without fail.</p> <p>17 Q. All right.</p> <p>18 A. It's a required practice.</p> <p>19 Q. And --</p> <p>20 A. If there's information that is or can be</p> <p>21 materially misinterpreted, you have a professional</p> <p>22 responsibility to attempt to have the record</p> <p>23 redacted.</p> <p>24 Q. And that's why you did it here?</p> <p>25 A. Yes.</p>

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Ben Korbly

<p style="text-align: right;">Page 258</p> <p>1 We never agreed with that. They were immaterial,  2 so there wasn't the generally accepted accounting  3 principles for those transactions changed during  4 that era, and did require that they be put on the  5 books.  6 But, technically speaking, they were  7 not violating accounting rules by not presenting  8 them on the books. They were violating rules of  9 forthrightness with the auditor by not telling them  10 about the plans.  11 The third item had to do with the  12 ninety-nine. And as we left the party, it was  13 unsubstantiated that the adjustment that Joe  14 proposed in 1996 belong there.  15 Q. What adjustment was that?  16 A. He was proposing some bifurcation of the  17 ninety-nine that went back against the -- he was  18 proposing some bifurcation of the \$99 million so  19 that some of it went back to the June 30th of 1996  20 accounts, some went to the June of '97. We had no  21 evidence that supported his argument for '96. So I  22 don't think we ever brought that to resolution  23 either.  24 Q. Was it your conclusion, however,  25 that at least the '97 financial statements needed</p>	<p style="text-align: right;">Page 260</p> <p>1 THE VIDEO OPERATOR: We are back on  2 the record at 3:47 p.m.  3 BY MR. JONES:  4 Q. Mr. Korbly, I hand you now what has  5 been marked as Exhibit 1289 in these proceedings,  6 which is a copy of a memo from Anthony Sanzo to  7 various, apparently lists of individuals at AHERF  8 dated September 2, 1998 attaching a press release  9 for immediate release with a contact person with  10 the name of Thomas Chakurda.  11 Have I described the exhibit  12 accurately?  13 A. Yeah, yes.  14 Q. And is this a copy, that is page 2  15 of the document, a copy of the press release to  16 which you were referring before we took our last  17 break?  18 A. Yes.  19 Q. And this is the press release in  20 final form, to the best of your recollection, that  21 PricewaterhouseCoopers approved for release?  22 MR. RYAN: Objection.  23 A. We -- I don't think we had the authority to  24 approve it for release. I think our role was we  25 agreed with how we were being described in it.</p>
<p style="text-align: right;">Page 259</p> <p>1 to be restated for some portion of the ninety-nine,  2 if the other issues could be resolved, that is the  3 Lockhart issue?  4 A. No.  5 Q. And why is that?  6 A. Materiality was an assessment that would  7 have to have been made.  8 Q. And you didn't make it?  9 A. We didn't have the numbers in which to make  10 it, because you have to have all of the preliminary  11 numbers.  12 Q. And is it fair to say, then, that  13 the work just wasn't completed that would allow you  14 to make the determination?  15 A. The client did not do the things necessary  16 to facilitate supporting their own assertion of  17 restatement and to support our auditing it.  18 Q. At least at the time you were  19 separating from your work on the matter?  20 A. Yes.  21 MR. JONES: Let's take a quick break  22 here.  23 THE VIDEO OPERATOR: Going off the  24 record at 3:43 p.m.  25 (Recess, 3:43 to 3:47.)</p>	<p style="text-align: right;">Page 261</p> <p>1 Q. And how did you communicate that  2 agreement?  3 A. We talked to Joe, or whomever.  4 Q. And when you say the "we", you mean  5 the phrase that refers to PricewaterhouseCoopers in  6 or about the third line of the press release?  7 A. And what follows that. You know, one of  8 the points, the only time you see the word  9 "restatement" is you see "considers restatement",  10 and the signal then in the body of the memo is  11 that, they, AHERF believes their financial  12 statements may require revision.  13 Q. And I guess I'm trying to do this  14 fairly straightforwardly. In any event, you saw  15 personally a copy of this press release with this  16 text before it went out, and voiced to those  17 sending it out that you had no objection to the way  18 PricewaterhouseCoopers was presented in the press  19 release?  20 Is that fair?  21 A. That's fine.  22 Q. And including Price Waterhouse's  23 role with respect to anything said in the press  24 release?  25 Is that accurate?</p>

66 (Pages 258 to 261)



Ben Korbly

<p style="text-align: right;">Page 262</p> <p>1 A. Including whatever you just said.</p> <p>2 Q. Well, what I mean is you saw it</p> <p>3 before it went out and you didn't have any problem</p> <p>4 with the way PricewaterhouseCoopers's role in the</p> <p>5 no reliance statement that exists here -- let me</p> <p>6 try that again.</p> <p>7 What I mean to say is you saw the</p> <p>8 statement before it went out, and you had no</p> <p>9 problem with the way PricewaterhouseCoopers's work</p> <p>10 or role with respect to the potential restatement</p> <p>11 or the no reliance on the financial statements that</p> <p>12 was being announced here?</p> <p>13 Is that fair?</p> <p>14 MR. RYAN: Objection.</p> <p>15 A. It's neither fair nor accurate.</p> <p>16 Q. All right. When you say you</p> <p>17 agree --</p> <p>18 A. Can I perhaps tell you what I think I did?</p> <p>19 Q. Well, let's try it this way:</p> <p>20 First, break it down. Did you see</p> <p>21 the draft before it went out with this text?</p> <p>22 A. I saw numerous drafts.</p> <p>23 Q. And you saw the final draft before</p> <p>24 it went out?</p> <p>25 A. I believe so.</p>	<p style="text-align: right;">Page 264</p> <p>1 statements, which they can do at will without any</p> <p>2 consultation with the auditor, very rare is the</p> <p>3 auditor who would leave their opinion out on the</p> <p>4 street if the client withdraws their financial</p> <p>5 statements.</p> <p>6 Our counsel to this client was</p> <p>7 different. Our counsel to this client was</p> <p>8 accelerate your efforts, resolve these issues, come</p> <p>9 to a conclusion on restatement, and then go. And</p> <p>10 we stuck with that counsel until they had burned</p> <p>11 much time up.</p> <p>12 Q. Let me get back to my question.</p> <p>13 A. My point is there was a terrible sense of</p> <p>14 compromise in here that you're kind of asking me to</p> <p>15 say this is accurate. I mean, I did not -- I</p> <p>16 agreed that they could go to market with this and</p> <p>17 it was acceptable to me.</p> <p>18 Was it accurate? Was it the best</p> <p>19 answer? Was it the right way to go? There's a</p> <p>20 awful lot of questions that don't jump into</p> <p>21 accurate. So I can't agree that this accurate.</p> <p>22 Q. Is there anything in here, in this</p> <p>23 press release, that you believed, then, in</p> <p>24 September 1998, was wrong?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 263</p> <p>1 Q. And you communicated that from Price</p> <p>2 Waterhouse's perspective, it was okay to</p> <p>3 disseminate?</p> <p>4 Is that fair?</p> <p>5 A. Yes.</p> <p>6 Q. And now can you tell me what you</p> <p>7 think you were doing by communicating that was</p> <p>8 okay?</p> <p>9 A. We could live with the press release after</p> <p>10 working long hours and days with too many lawyers</p> <p>11 and accountants on the phone wordsmithing words</p> <p>12 that were about fifty words trying to get people to</p> <p>13 understand concepts of responsibility, and how they</p> <p>14 could or couldn't do things to the market.</p> <p>15 So we end up with these words which</p> <p>16 are tolerable, acceptable, whatever phraseology you</p> <p>17 want. I'm not saying that what's in here is wrong.</p> <p>18 One of the fundamental questions was is it better</p> <p>19 or not better to do this, for which there is still</p> <p>20 some substantial doubt about the answer to that.</p> <p>21 Q. But what you're telling me is that</p> <p>22 you okayed the ultimate language as at least</p> <p>23 accurate?</p> <p>24 A. No, what I'm telling you is when your</p> <p>25 client elects to withdraw their financial</p>	<p style="text-align: right;">Page 265</p> <p>1 Q. And you ultimately withdrew your</p> <p>2 opinion on the fiscal year 1997 AHERF financial</p> <p>3 statements, that is PricewaterhouseCoopers did?</p> <p>4 A. "No further reliance should be placed on</p> <p>5 the financial statements or the Coopers &amp; Lybrand</p> <p>6 report thereon."</p> <p>7 Q. Was there -- and you're quoting the</p> <p>8 press release?</p> <p>9 A. Yes.</p> <p>10 Q. Was there any other formal way in</p> <p>11 which you withdraw your opinion?</p> <p>12 A. I believe that copies of this document were</p> <p>13 furnished by the company to various places to</p> <p>14 substantiate and accomplish notice.</p> <p>15 Q. Do you know?</p> <p>16 A. But there is no -- the formal process,</p> <p>17 typically for a public company, this is not what,</p> <p>18 you know, would result in a press release being</p> <p>19 filed within the EDGAR system for public companies.</p> <p>20 The SEC database system.</p> <p>21 For this entity, I know copies of</p> <p>22 this release were filed with the NRMSIR, so that</p> <p>23 the bond holders would be aware that the financials</p> <p>24 and the opinion had been pulled. NRMSIR is</p> <p>25 something like N-M-R-S-I-R and I've got five out of</p>

67 (Pages 262 to 265)



Ben Korbly

<p style="text-align: right;">Page 274</p> <p>1 fraud or the SAS 82 implications of your work with 2 anybody at AHERF or the audit committee? 3 A. In one of my early, if not my earliest 4 meetings with Joe. 5 Q. What about the audit committee? 6 A. Well, it was my understanding that it was 7 identified to them in executive session, and not 8 the SAS 82 word, but the improper or inappropriate 9 actions of management at the June 10th meeting. 10 And I will defer to others who were there for who 11 said what to whom. 12 Q. And you learned that, however, 13 through conversations with Mr. Testoni or Mr. 14 Buettner? 15 A. Or Amy. 16 Q. All right. 17 A. I, at our meeting on the 27th signaled to 18 the audit committee that they had a SAS 82 issue 19 that they needed to consider and put on their plate 20 and deal with. 21 Q. How did you signal that? 22 A. I said there is a SAS 82 issue here, which 23 the audit committee needs to address. 24 Q. In the meeting? 25 A. Yeah, the August 27th meeting. I repeated</p>	<p style="text-align: right;">Page 276</p> <p>1 A. "Dollars, \$28,300,000 was related to --" 2 Q. Or released? 3 A. "Released to income as an increase in 4 patient revenue (to offset DVOG charge)." 5 Q. And then the next sentence? 6 A. "The balance of 71 million --" I don't 7 think there is a dollar sign, but the balance of 8 the 71 "remained on the balance sheet of DVOG at 9 year end in the form of patient receivable 10 reserves. Further investigation is needed to --" 11 And then, you know, my editorial 12 was, you know, describe it how you want to, but 13 further investigation was needed to resolve it. 14 Q. So, in other words, the handwriting 15 stops with the word "to" and then you were going to 16 voice other edits to Mr. Dionisio or whomever 17 drafted the document? 18 A. Yes. 19 Q. You have before you now 20 Exhibit 4150? 21 A. Yes. 22 Q. It appears to reorder some of the 23 points and perhaps take some edits, either yours or 24 that of others. 25 Do recall ever requesting that the</p>
<p style="text-align: right;">Page 275</p> <p>1 that September 1, and we then sent a draft letter 2 to the chairman September 8th because we weren't 3 getting a lot of I hear you, this is really ugly, 4 kind of stuff. 5 Q. So these edits are your suggestions 6 on the document. Do you recall now what you were 7 editing? Do you recall that you were editing a 8 proposed press release or some other document? 9 A. I -- 10 Q. This is back to Exhibit 4149. 11 A. I believe it was a briefing document of the 12 four points that went by Joe to the audit committee 13 on what were the issues that he was framing, or 14 trying to do some points on what were the issues 15 that he was framing about restatement. 16 Q. All right. 17 A. And as we went through the fact pattern 18 that you really don't have the facts to assert the 19 restatement yet, you're showing more of a 20 conclusion than exists. 21 Q. I'm going to ask you to read in the 22 handwriting that you put at the bottom of the page, 23 and after the inserted parenthetical. It looks to 24 me like it starts with SLB, but I can't really read 25 it.</p>	<p style="text-align: right;">Page 277</p> <p>1 order of the issues be changed? 2 A. Yes. 3 Q. And why is it that you requested 4 that and to whom did you make the request? 5 A. It was communicated to AHERF. The concept 6 was the first three items are issues about a 7 potential area of restatement. The fourth item is 8 an issue about a potential area of revision. So I 9 think the header now says potential areas of 10 revision, which is, therefore, I guess, deemed to 11 incorporate restatement or otherwise. 12 Q. I see. And you're referring to the 13 first three items and the forth item on Exhibit 14 4150 when you make those comments? 15 A. Yes. 16 Q. And the last exhibit is 4151 in this 17 set, which is a fax cover sheet from Mr. Stalder to 18 Mr. Dionisio dated the same date as the press 19 release, September 2, 1998. And it reads on its 20 cover sheet: 21 "Joe: As requested, I have marked 22 up the proposed press release to reflect matters 23 agreed to in our most recent conversation. I 24 acknowledge your need to balance our input from all 25 of the other parties involved, but I seriously hope</p>

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Ben Korbly

<p style="text-align: right;">Page 278</p> <p>1 that you will consider our proposed changes."  2 Have I read that right?  3 A. I think so.  4 Q. And you were shown as a blind carbon  5 copy. Do you recall receiving this fax and its  6 attachment?  7 A. No.  8 Q. Do you have any doubt that you got  9 it?  10 A. Not really, no. I mean, I --  11 Q. Do you recall that the press release  12 was being worked in draft form even the day it was  13 released?  14 A. I don't recall it, but that wouldn't  15 surprise me about a press release of this nature.  16 Q. Is the handwriting on the next two  17 pages yours, or any of it?  18 A. No.  19 Q. Do you know whose it is?  20 A. No.  21 Q. Do you have any recollection now of  22 why the press release would have had, in any of its  23 iteration, the page number 30 beneath it or at the  24 bottom of it?  25 A. No.</p>	<p style="text-align: right;">Page 280</p> <p>1 A. Yes.  2 Q. And here we see, on page two of the  3 exhibit, a series of descriptions of the four  4 issues of potential restatement, some of which  5 language, or the language of which may be similar  6 to what we just saw in the prior set of exhibits.  7 Am I right?  8 A. I'm sorry, you are going to have to ask  9 your question again. I didn't understand it.  10 Q. Stated in the minutes, under  11 subheading Roman numeral IV(a) are four issues of  12 potential restatement that were apparently  13 discussed, some of the language of which is not  14 dissimilar from the exhibits we just saw.  15 Am I right?  16 A. Yes.  17 Q. Does that jog your recollection that  18 in part, perhaps, that Exhibits 4148 through 4150  19 were prepared and commented upon by you. Prepared  20 by, and perhaps others and commented upon by you  21 for submission to the board as potential areas of  22 restatement?  23 MR. RYAN: Objection. I think the  24 witness has already said that.  25 MR. JONES: Well, if he has he can</p>
<p style="text-align: right;">Page 279</p> <p>1 Q. Do you recall it being a large part  2 of some other document that you saw, or a small  3 part of some other large document that you saw?  4 A. No.  5 Q. Do you recognize the handwriting?  6 A. No.  7 Q. Do you recall who else had input  8 besides Coopers &amp; Lybrand -- I'm sorry,  9 PricewaterhouseCoopers and AHERF, into the press  10 release?  11 And the reason I ask is Mr. Stalder  12 appears to refer to others in his fax cover sheet.  13 A. No, I do not recall.  14 Q. I'm handing you now, Mr. Korbly,  15 Exhibit 2063 which has been previously marked in  16 the case. And I believe you will tell me, instead  17 of the Tuesday September 1, 1998 minutes of the  18 finance and audit committee of AHERF, a meeting you  19 attended; am I right?  20 A. Yes, I attended the meeting and yes, this  21 appears to be minutes of that meeting.  22 Q. Did you see these minutes yesterday?  23 A. Yes.  24 Q. And you saw them at some prior time  25 because you commented on them?</p>	<p style="text-align: right;">Page 281</p> <p>1 say yes.  2 MR. RYAN: I'm just saying that the  3 document doesn't refresh his recollection if he's  4 already testified to it independently.  5 MR. JONES: I'm not sure that's the  6 state of the testimony.  7 Q. Let me ask you a real simple one.  8 Looking at the minutes that are  9 before you as Exhibit 2063, and having just seen  10 Exhibits 4148 through 4150, do you have a  11 recollection today as to whether these exhibits  12 were commented on by you and others in an attempt  13 to come up with issues of potential restatement to  14 be visited with, or to be visited about with the  15 board?  16 MR. RYAN: Objection to form.  17 Q. Or the audit committee or finance  18 committee?  19 A. Well, I provided comments because my  20 handwriting is on a number of these. Similar  21 wording is in here. And what the uses were that  22 Joe Dionisio had, you know, if you asked me is it  23 logical to assume one of them or the primary one  24 was to put something in here, yes.  25 If you are asking me if I am happy</p>

71 (Pages 278 to 281)

## DEPOSITION ERRATA SHEET

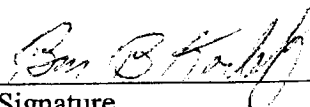
RE: THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF  
ALLEGHENY HEALTH, EDUCATION AND RESEARCH FOUNDATION  
VS. PRICEWATERHOUSECOOPERS, L.L.P.

I, Ben Korbly, wish to make the following amendments, additions, deletions or corrections to my deposition given on December 16, 2003, for the following reasons. I have signed my name to the errata sheet and authorize you to attach it to the original transcript.


<u>Page/Line #</u>	<u>Amendment</u>	<u>Reason for Change</u>
3:11; 46:22; 73:23; 143:6, 161:21; 170:19; 187:3; 202:15; 239:23; 240:21,23,24; 303:24; 304:9; 324:2; 350:3	"PWC" should read "PwC"	Clarification
22:22; 44:5,6	"GASS" should read "GAAS"	Error
48:10	"insurance" should read "assurance"	Error
68:23-4	First sentence should read, "I learned from Amy that she had received it."	Clarification
75:10	"payer" should read "payor"	Error
82: 11,12,17,22; 97:17; 98:13; 99:15; 105:21; 115:17; 117:7; 119:12; 120:2; 136:4; 199:15	"Cipielik" should read "Cepielik"	Error

98:2	"an" should read "and"	Error
113:23,25; 134:12,25; 135:16; 136:6; 137:5,25; 140:17; 142:9; 143:18; 173:18,22; 197:3; 330:18	"Kirsteen" should read "Kirstein"	Error
126:21	"not" should read "now"	Error
147:18	Insert "to" between "going" and "get"	Clarification
167:1	"technicality" should read "technically"	Clarification
172:7	"Sharif" should read "Sherif"	Error
181:5	"what" should read "that"	Error
189:4	"Mike K." should read "Mike M."	Clarification
191:21	Insert "had" between "Amy" and "been"	Clarification
195:6	"negotiation" should read "negotiate"	Clarification
198:15	"Adamzik" should read "Adamczak"	Error
246:16-18	Answer should read, "Bullet one, 'Why the June 98 audit committee meeting not minuted?'"	Clarification
286:23	"I don't" should read "I didn't"	Clarification
350:6-7	Answer should read, "I don't know that I have, but I believe I did."	Clarification
350:21	Insert "was" between "I" and "talking"	Clarification
356:13	Insert "not" between "is" and "different"	Error
356:23	"Graduate" not "graduate"	Error

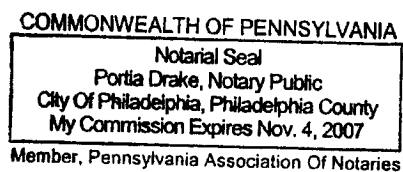
In all other respects, the transcript is true and correct.

  
Signature

Subscribed and sworn to before me this 10th day of February, 2003<sup>4</sup>

  
Notary Public

File/Reference Number: 7472



**Korman Dep.**



THE OFFICIAL COMMITTEE OF : CIVIL ACTION  
UNSECURED CREDITORS OF :  
ALLEGHENY HEALTH, :  
EDUCATION, AND RESEARCH :  
Foundation :  
 :  
 :  
vs. :  
 :  
 :  
PRICewaterhouse COOPERS, : CASE NO.  
LLP : 00-684 (W.D.Pa.)

Philadelphia, Pennsylvania  
Wednesday, August 28, 2002

Videotape Deposition of BERNARD J. KORMAN, ESQ., taken pursuant to notice, at the law offices of Pelino & Lentz, One Liberty Place, 32nd Floor, on the above date, beginning at approximately 8:32 a.m., before Debra Ann Whitehead, a Court Reporter, an Approved Reporter of the United States District Court, and Notary Public.

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1 the possible closing of Graduate Hospital. 08:35:43  
 2 Q. What experience or expertise did you have 08:35:49  
 3 prior to that time that led the University of 08:35:51  
 4 Pennsylvania to consult with you on that topic, if 08:35:56  
 5 you know? 08:35:58  
 6 A. I was the CEO of a public hospital management 08:35:59  
 7 company, and I have had specifically previous 08:36:04  
 8 experience with the closing of Mercy Douglas 08:36:09  
 9 Hospital in Philadelphia. 08:36:12  
 10 Q. What was the name of the hospital management 08:36:13  
 11 company of which you were CEO prior to 1975? 08:36:15  
 12 A. American Medicorp, M-E-D-I-C-O-R-P. 08:36:18  
 13 Q. And during what period of time were you CEO of 08:36:22  
 14 American Medicorp? 08:36:25  
 15 A. From 1968 to 1976, I believe. 08:36:28  
 16 Q. And after 1976, did you continue any 08:36:33  
 17 association with American Medicorp? 08:36:37  
 18 A. Until the end of '76, I believe. 08:36:41  
 19 Q. Now, you provided consulting services to the 08:36:48  
 20 University of Pennsylvania after 1975 relating to 08:36:53  
 21 The Graduate Hospital; correct? 08:36:58  
 22 A. Yes. 08:36:59  
 23 Q. And is it correct that in 1977, rather than 08:37:01  
 24 closing The Graduate Hospital, the University of 08:37:06  
 25 Pennsylvania spun it off as an independent entity? 08:37:09

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1 A. Yes. 08:37:12  
 2 Q. And did you have anything to do with devising 08:37:13  
 3 the strategy that led to that spin-off rather than 08:37:19  
 4 closure of Graduate? 08:37:21  
 5 A. Yes. 08:37:22  
 6 Q. Were you in fact the one principally 08:37:26  
 7 responsible for developing that strategy? 08:37:30  
 8 A. It was my plan, yes. 08:37:32  
 9 Q. And am I correct that when that spin-off 08:37:36  
 10 became effective, that you, from the start, were a 08:37:41  
 11 member of the Board of Trustees of Graduate 08:37:44  
 12 Hospital? 08:37:48  
 13 A. Board of Directors. 08:37:48  
 14 Q. Pardon me. 08:37:51  
 15 Is that correct? 08:37:53  
 16 A. That's correct. 08:37:54  
 17 Q. And is it the case that from at least 1977 08:37:57  
 18 onward, up until the time that The Graduate 08:38:00  
 19 Hospital and associated hospitals were merged into 08:38:08  
 20 SDN, that throughout that entire time period, you 08:38:11  
 21 paid close attention to the business and strategy 08:38:17  
 22 of The Graduate Hospital? 08:38:21  
 23 A. Attention. I don't know that I would agree 08:38:25  
 24 with "close." I don't know what you mean by 08:38:33  
 25 "close." 08:38:33

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1 But attention, yes. 08:38:33  
 2 Q. Did you consider it part of your 08:38:39  
 3 responsibility as a Graduate Board member to keep 08:38:41  
 4 yourself well informed about financial performance 08:38:44  
 5 of The Graduate Hospital and related entities? 08:38:54  
 6 A. I considered -- I took my fiduciary duties as 08:38:57  
 7 a director very seriously, and I believe that I 08:39:02  
 8 exercised all appropriate judgments in that regard. 08:39:06  
 9 Q. Mr. Korman, that's a legal conclusion. I am 08:39:21  
 10 going to try not to ask you much about legal 08:39:24  
 11 conclusions today. 08:39:26  
 12 Let me ask -- 08:39:27  
 13 A. I apologize. That's my impediment having 08:39:28  
 14 practiced law. 08:39:32  
 15 Q. I understand that. It damages all of us 08:39:32  
 16 permanently. 08:39:34  
 17 A. Yes. 08:39:35  
 18 Q. On a more practical level, did you, on an 08:39:36  
 19 ongoing basis as a Trustee of Graduate, consider it 08:39:41  
 20 part of your responsibility to keep yourself well 08:39:45  
 21 informed about the business performance of The 08:39:47  
 22 Graduate Hospital? 08:39:51  
 23 A. Yes; yes. 08:39:51  
 24 Q. And did you consider it part of your 08:39:53  
 25 responsibility to keep yourself well informed about 08:39:56

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1 developments affecting the health care industry 08:40:02  
 2 generally? 08:40:05  
 3 A. I did; not only because of Graduate, but 08:40:07  
 4 because of my professional activity. 08:40:10  
 5 Q. When Graduate became an independent entity in 08:40:18  
 6 1977, who became the first chief executive officer? 08:40:22  
 7 A. Paul Skofield -- of Graduate Hospital? 08:40:28  
 8 Q. Yes. 08:40:30  
 9 A. Paul Skofield. 08:40:31  
 10 Q. At the time of the divestiture of Graduate in 08:40:32  
 11 1977, was there created an independent parent 08:40:36  
 12 entity either called or as a predecessor to GHS? 08:40:41  
 13 A. I don't recall. I believe that the only 08:40:51  
 14 entity that was created was The Graduate Hospital. 08:40:56  
 15 I believe that's the case. 08:41:01  
 16 Q. And at the time of the divestiture in 1977, 08:41:04  
 17 who became the first Chairman of The Graduate 08:41:09  
 18 Hospital? 08:41:12  
 19 A. I -- it's not clear. The first chairman, I 08:41:21  
 20 believe, was Harold Cramer, I believe. 08:41:26  
 21 There may have been somebody prior 08:41:29  
 22 to Harold during some interim period, but I believe 08:41:30  
 23 Harold was the first chairman. 08:41:34  
 24 Q. And to summarize points that we will touch on 08:41:38  
 25 in more detail later, am I correct that you became 08:41:40

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1 Chairman of the Board of GHS in 1995? 08:41:43  
 2 A. Of the Graduate Health System. 08:41:48  
 3 Q. Yes. 08:41:51  
 4 A. As distinguished from Graduate Hospital. 08:41:51  
 5 Q. Yes. 08:41:54  
 6 A. That's correct. 08:41:54  
 7 Q. Do you recall when the structure of GHS as 08:41:56  
 8 parent owning The Graduate Hospital was created? 08:42:03  
 9 A. I don't recall the date. 08:42:09  
 10 Q. Do you recall what the immediate cause of the 08:42:13  
 11 creation of that structure was? 08:42:18  
 12 A. Well, it was part of a corporate 08:42:22  
 13 reorganization, which I believe was stimulated by a 08:42:25  
 14 number of activities other than Graduate Hospital 08:42:33  
 15 that we were getting involved in. 08:42:38  
 16 And upon the recommendation of 08:42:41  
 17 counsel, we created GHS as a parent holding 08:42:43  
 18 company, support organization. I think it was a 08:42:53  
 19 501(c)(4), I think that's what it was. 08:42:58  
 20 Q. Do you recall approximately when that 08:42:59  
 21 happened? 08:43:00  
 22 A. My sense is early '80s. That's my sense. 08:43:03  
 23 Q. And after that time, did there continue to 08:43:09  
 24 exist a Board of Directors of The Graduate 08:43:10  
 25 Hospital? 08:43:14

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1 A. Oh, yes. 08:43:14  
 2 Q. And did you continue to be a member of that 08:43:16  
 3 Board? 08:43:18  
 4 A. It's not clear to me whether there was some 08:43:25  
 5 overlap period of time. 08:43:32  
 6 I know that I resigned from that 08:43:34  
 7 Board and remained on the Board of the parent. I 08:43:38  
 8 don't recall whether there was some overlap period 08:43:43  
 9 of time. 08:43:45  
 10 Q. But, if so, it was not an extended period of 08:43:46  
 11 time? 08:43:48  
 12 A. I don't believe so. 08:43:49  
 13 Q. And did you become a member of the Board of 08:43:50  
 14 Directors of GHS at the time GHS was formed? 08:43:52  
 15 A. Yes. 08:43:56  
 16 Q. And am I correct that in 1996, upon the 08:44:01  
 17 conclusion of the merger of The Graduate Hospital 08:44:04  
 18 and other affiliated hospitals into SDN, that you 08:44:07  
 19 became CEO of Graduate Health Services? 08:44:12  
 20 A. I became CEO of Graduate Health Services, 08:44:18  
 21 which I believe at that time the charter was 08:44:21  
 22 amended and the name was changed to Philadelphia 08:44:27  
 23 Health Care Trust. 08:44:32  
 24 Q. The name change, as far as you recall, 08:44:32  
 25 happened essentially concurrently with that 08:44:35

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1 transaction? 08:44:37  
 2 A. Or shortly thereafter. 08:44:38  
 3 Q. Upon the completion of the SDN transaction, 08:44:41  
 4 did Philadelphia Health Care Trust, or Graduate 08:44:47  
 5 Health Systems, whatever its title was, continue to 08:44:52  
 6 own any operating health care entities? 08:44:56  
 7 A. No. 08:45:03  
 8 Q. As a Board member and chairman -- well, let me 08:45:23  
 9 start again. 08:45:27  
 10 As chairman of GHS between 1995 and 08:45:28  
 11 1996, can you tell me what your total compensation 08:45:33  
 12 from GHS was? This is prior to the time that you 08:45:39  
 13 became CEO. 08:45:42  
 14 A. Prior to becoming CEO, I think my total 08:45:50  
 15 compensation was as a director. 08:45:54  
 16 Q. And can you tell me roughly what that was on 08:45:56  
 17 an annual basis, including base and meeting fees? 08:45:59  
 18 A. I believe it was a total of \$25,000. 08:46:04  
 19 Q. And upon taking the position of CEO of GHS, 08:46:09  
 20 did you also remain Chairman of the Board of GHS? 08:46:15  
 21 A. Yes; I was chairman and CEO. 08:46:25  
 22 Q. And, in that capacity, can you tell me roughly 08:46:25  
 23 what your annual compensation from GHS or 08:46:26  
 24 Philadelphia Health Care Trust was? 08:46:30  
 25 A. My salary, which I believe at that time was 08:46:34

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1 \$100,000, and director's fees. 08:46:37  
 2 Q. Again, continuing to be approximately 25,000? 08:46:41  
 3 A. That's correct. 08:46:43  
 4 Q. At that time, that is, when you took the 08:46:45  
 5 position as CEO of GHS, what other employment 08:46:51  
 6 positions, if any, did you hold with other 08:46:59  
 7 entities? 08:47:02  
 8 A. I don't believe I had any other employment 08:47:13  
 9 activity. 08:47:15  
 10 Q. Were you at that time not CEO of any other 08:47:19  
 11 entity? 08:47:21  
 12 A. In 1996, no. 08:47:23  
 13 Q. Am I correct, however, that you were a Board 08:47:27  
 14 member of a number of other entities at that time? 08:47:30  
 15 A. I was. 08:47:33  
 16 Q. Let me show you a document that was marked at 08:47:47  
 17 your deposition in the prior litigation, an 08:47:50  
 18 incomplete document bearing Bates Nos. 1542 through 08:47:57  
 19 1546, and a handwritten designation of Korman 08:48:03  
 20 Exhibit 9. It is difficult to describe because of 08:48:09  
 21 its fragmentary nature. 08:48:14  
 22 And, Mr. Korman, I am not going to 08:48:31  
 23 ask you to vouch for this document. I have read 08:48:33  
 24 your prior testimony about it. But I am going to 08:48:35  
 25 use it just as a springboard to ask some questions 08:48:37

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1 Osteopathic such as that reflected in your letter 11:57:01  
 2 of September 12? 11:57:02  
 3 A. No, I do not know. 11:57:04  
 4 Q. At the time that you wrote this letter in 11:57:36  
 5 September of 1996 -- strike that. You probably 11:57:38  
 6 didn't write the letter. 11:57:43  
 7 At the time you signed this letter 11:57:45  
 8 in September of 1996, did The Graduate Hospital or 11:57:46  
 9 Mt. Sinai Hospital or the obligated group 11:57:53  
 10 comprising those two hospitals have any obligation 11:57:57  
 11 for the debts of GHS Osteopathic? 11:57:59  
 12 MS. MEADEN: Objection as to form 11:58:07  
 13 and foundation. 11:58:08  
 14 A. Not to my knowledge. 11:58:10  
 15 Q. As of September 1996 did GHS Osteopathic, or 11:58:28  
 16 the hospitals comprising GHS Osteopathic, having 11:58:32  
 17 gone bankrupt, would that have had a financial 11:58:40  
 18 impact on The Graduate Hospital or Mt. Sinai 11:58:44  
 19 Hospital, apart from rendering some or all of their 11:58:50  
 20 intercompany receivables from the Osteopathic 11:58:53  
 21 institutions uncollectable? 11:58:56  
 22 MS. MEADEN: Objection. 11:58:58  
 23 A. I'm not a bankruptcy attorney, so I really 11:59:00  
 24 can't answer that question in the manner in which 11:59:04  
 25 you are asking. 11:59:08

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1 Q. Let me ask you to answer that question to the 11:59:09  
 2 extent you have any understanding as a former Board 11:59:13  
 3 member of the parent entity, GHS. 11:59:16  
 4 A. I think the question is still the same, in 11:59:21  
 5 whether there was any legal liability in that 11:59:24  
 6 regard. 11:59:26  
 7 And the answer is, I don't know 11:59:28  
 8 whether there is any legal liability, if that's the 11:59:29  
 9 question you are asking. 11:59:31  
 10 Q. You mentioned that Coopers & Lybrand had had 12:00:02  
 11 involvement in due diligence prior to the 12:00:07  
 12 finalizing of the 1996 audited financials by 12:00:10  
 13 Deloitte & Touche; correct? 12:00:13  
 14 A. Yes. 12:00:14  
 15 Q. Do you know whether Coopers & Lybrand had any 12:00:15  
 16 control over the contents or form of the audited 12:00:22  
 17 financials as finally issued by Deloitte & Touche? 12:00:26  
 18 A. I know that they were directly involved with 12:00:30  
 19 Deloitte & Touche, because Mr. Abdelhak asked that 12:00:34  
 20 they be involved and asked our permission in that 12:00:39  
 21 regard, which we gave. 12:00:43  
 22 Q. Do you know what the nature of that 12:00:53  
 23 involvement was? 12:00:54  
 24 A. That was between Coopers and Deloitte and 12:00:56  
 25 Allegheny. 12:01:00

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1 Q. Do you know whether any changes to the 12:01:09  
 2 substance or presentation of the audited financials 12:01:12  
 3 were made at the request of Coopers & Lybrand? 12:01:15  
 4 A. That's -- if they were made, that was between 12:01:19  
 5 those parties. 12:01:22  
 6 Q. That is, you don't know? 12:01:23  
 7 A. The answer is, I don't know. 12:01:24  
 8 Q. Now, as you pointed out to me in the September 12:01:47  
 9 12 letter, which is Exhibit 251 -- 12:01:50  
 10 A. Yes. 12:02:08  
 11 Q. -- in addition to a representation on behalf 12:02:08  
 12 of GHS, you stated that, quote, Should such change, 12:02:11  
 13 that is, a transfer of control of assets, occur 12:02:18  
 14 prior to June 30, 1997, SDN, Inc., will assume the 12:02:23  
 15 current obligation of GHS to The Graduate Hospital. 12:02:33  
 16 Do you see that? 12:02:33  
 17 A. Yes. 12:02:33  
 18 Q. Pardon me. It does say that, but that's not 12:02:39  
 19 the language of interest. 12:02:44  
 20 Let me take you to the sentence at 12:02:44  
 21 the end of the paragraph about GHS Osteopathic, in 12:02:47  
 22 which it says, quote, We have been assured that 12:02:48  
 23 should such, that is, a transfer of control, occur 12:02:55  
 24 prior to June 30, 1997, SDN, Inc., will provide the 12:02:57  
 25 same assurance as GHS. 12:03:01

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1 And I understand that to be the 12:03:03  
 2 assurance to GHS Osteopathic; is that correct? 12:03:05  
 3 A. Yes, that is. 12:03:08  
 4 Yes, that's the second letter that's 12:03:10  
 5 attached hereto. 12:03:12  
 6 Q. And was a letter in the form appearing at PH 12:03:26  
 7 16905 in fact signed and provided to you by a 12:03:30  
 8 representative of AHERF? 12:03:35  
 9 A. I believe so. 12:03:38  
 10 MR. BROOKS: Let me mark as Exhibit 12:04:03  
 11 606, I believe, a letter on SDN letterhead, dated 12:04:05  
 12 October 3, 1996, bearing Bates Nos. DC 0618, Pages 12:04:12  
 13 1 and 2, from Steve Spargo, to Bernard Korman. 12:04:20  
 14 (Document marked for identification 12:04:20  
 15 as Exhibit 606.) 12:04:48  
 16 BY MR. BROOKS: 12:04:48  
 17 Q. Mr. Korman, do you believe that you recall 12:04:53  
 18 seeing this document before? 12:04:55  
 19 A. I don't have an independent recollection of 12:04:58  
 20 it, but it certainly does look familiar. 12:05:01  
 21 Q. Does this letter appear to you to represent a 12:05:10  
 22 guarantee from SDN to assume the GHS obligation to 12:05:14  
 23 GHS Osteopathic that we have been discussing? 12:05:25  
 24 MS. MEADEN: Objection as to form. 12:05:27  
 25 A. If I read the second paragraph correctly, SDN 12:05:31



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1 guarantees both obligations, Paragraph 1 and 12:05:36  
 2 Paragraph 2 of the letter which I sent to Deloitte. 12:05:46  
 3 Q. Yes. But in particular -- 12:05:51  
 4 A. Yes. The answer is, yes. 12:05:52  
 5 Q. And this letter identifies various sources of 12:05:59  
 6 funding which SDN identifies as enabling it to 12:06:05  
 7 stand behind such guarantees; correct? 12:06:13  
 8 A. The letter speaks for itself. 12:06:16  
 9 Q. Well, is that your understanding of what this 12:06:17  
 10 letter -- backing up. 12:06:21  
 11 Mr. Korman, you were the recipient 12:06:23  
 12 of this letter; is that correct? 12:06:25  
 13 A. That is correct. 12:06:26  
 14 Q. Were these guarantees important to you at the 12:06:28  
 15 time? 12:06:34  
 16 A. They were important to Deloitte at the time. 12:06:34  
 17 Q. Did you understand this letter to identify 12:06:42  
 18 various sources of funds which would enable SDN to 12:06:43  
 19 stand behind the guarantees being made here? 12:06:48  
 20 A. There are six sources that are identified in 12:06:53  
 21 the letter; they are the six bullet points at the 12:06:57  
 22 bottom of the letter. 12:07:01  
 23 Yes. The answer is, yes. 12:07:03  
 24 Q. SDN did not here identify any guarantee from 12:07:08  
 25 AHERF as a source of funds enabling it to stand 12:07:13

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1 behind its undertakings, did it? 12:07:17  
 2 MS. MEADEN: Objection. 12:07:20  
 3 A. This letter is a letter from SDN; it is not a 12:07:27  
 4 letter from AHERF. 12:07:30  
 5 MR. BROOKS: Read back the question, 12:07:47  
 6 please. 12:07:48  
 7 (The reporter read the record as 12:07:48  
 8 requested.) 12:08:02  
 9 A. (Continued.) I don't know that that's the 12:08:03  
 10 case. 12:08:04  
 11 If you look at the second bullet 12:08:05  
 12 point, "Other sources of liquidity that may be 12:08:10  
 13 available to SDN." I don't know what SDN's 12:08:12  
 14 relationship was with AHERF. 12:08:15  
 15 Q. Let me direct you to your testimony, your 12:08:36  
 16 previous testimony, at Page 416 of the Philadelphia 12:08:38  
 17 Health Care Trust litigation deposition. 12:08:42  
 18 A. 416? 12:08:49  
 19 Q. Yes, sir. 12:08:50  
 20 A. Yes. 12:09:01  
 21 Q. And let me direct your attention particularly 12:09:03  
 22 to the testimony going from Line 10 through Line 12:09:05  
 23 24. I am going to ask you to look at that. 12:09:10  
 24 A. Yes. 12:09:18  
 25 Q. Was it in fact your understanding at the time 12:09:31

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1 of, say, September of 1996 that SDN itself did not 12:09:34  
 2 have substantial assets? 12:09:39  
 3 A. So far as we knew, it didn't have any assets. 12:09:43  
 4 Q. And you understood, did you not, that the 12:09:53  
 5 structure of the proposed merger was that, in the 12:09:56  
 6 first instance, the Graduate entities would be 12:09:59  
 7 merged into SDN, not into AHERF? 12:10:01  
 8 A. No. Our understanding was that there would be 12:10:05  
 9 a two-step transaction; that first we would go into 12:10:10  
 10 SDN, and then we would go into AHERF. 12:10:13  
 11 Q. Did you have any -- did you receive any 12:10:20  
 12 representations or assurances as to how long the 12:10:23  
 13 period would be between the merger into SDN and the 12:10:28  
 14 roll into AHERF? 12:10:32  
 15 A. Yes. I received assurances from Mr. Abdelhak 12:10:33  
 16 that within a six-month period of time that would 12:10:39  
 17 occur. 12:10:42  
 18 Q. He told you, did he not, that during that 12:10:42  
 19 period of time, they would, among other things, 12:10:45  
 20 conduct due diligence; correct? 12:10:47  
 21 A. That's correct. 12:10:49  
 22 Q. Did you and he discuss what would be done if, 12:10:57  
 23 in the course of that due diligence, anything was 12:11:01  
 24 discovered that made it, in the judgment of the 12:11:05  
 25 AHERF Board, inappropriate to consolidate the 12:11:09

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1 Graduate entities into AHERF? 12:11:12  
 2 A. I believe in the merger documents, that we had 12:11:13  
 3 a provision that if it did not occur after a 12:11:16  
 4 certain period of time, that the transaction would 12:11:20  
 5 unravel. 12:11:24  
 6 Q. Would unwind? 12:11:26  
 7 A. Unwind. Excuse me, unwind. 12:11:27  
 8 Q. Let me ask you to turn to Page 414 of this 12:11:44  
 9 same transcript. 12:11:47  
 10 A. Yes. 12:11:49  
 11 Q. And direct your attention to the testimony 12:12:03  
 12 from Line 7 through Line 24. 12:12:03  
 13 A. Yes. 12:12:05  
 14 Q. And in one of your answers you refer to the 12:12:06  
 15 fact that you were fine with the structure, the 12:12:11  
 16 two-step structure, so long as you had, quote, the 12:12:14  
 17 necessary assurances that ultimately we would have 12:12:17  
 18 Allegheny behind this transaction and that they 12:12:20  
 19 would be assuming full responsibility for this 12:12:23  
 20 transaction? 12:12:24  
 21 A. Right. 12:12:27  
 22 Q. Can you explain to me what assurances you feel 12:12:27  
 23 that you received from Mr. Abdelhak to that effect? 12:12:33  
 24 A. I received oral assurances and I received a 12:12:38  
 25 letter from him to that effect, that that was his 12:12:40